

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters - 1420 East 6th Avenue
Helena, MT 59620

JUNE 9, 2005

Commission Members Present: Steve Doherty, Chairman; Tim Mulligan, Vice-Chairman; John Brenden; Shane Colton; Victor Workman.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director; FWP personnel.

Guests: See June, 2005 Commission file folder.

Topics of Discussion:

1. **Opening - Pledge of Allegiance**
 2. **Approval of May 12, 2005 Commission Minutes**
 3. **Approval of Commission Expenses through May 31, 2005**
 4. **Recognition Award to Bryce Christensen for 30 years of Service to FWP**
 5. **Recognition Award to Representative Jill Cohenour**
 6. **Sun River / Lewis Land Acquisition FAS - Final**
 7. **Whitehall Community Piedmont Fish Pond Acquisition from Golden Sunlight Mines – Final**
 8. **SB178 Aircraft Herding Administrative Rule – Tentative**
 9. **2005 Moose, Sheep, and Goat Quotas - Final**
 10. **2005 Mountain Lion Quotas - Final**
 11. **2006 Moose, Sheep, Goat Auction and Deer and Elk Auction/Lottery Annual Rules - Final**
 12. **2005 Furbearer Quotas – Tentative**
 13. **Trumpeter Swan Translocation – Final**
 14. **MT Haggin WMA Livestock Grazing Lease with Willow Glen Ranch – Final**
 15. **Ear Mountain Grazing Lease – Final**
 16. **Blue Eyed Nellie WMA – Long Property – Endorsement**
 17. **Beckman Estate Land Acquisition & Gift – Informational**
 18. **2005-2006 Bison Hunting Season Options – Informational**
 19. **Comprehensive Fish & Wildlife Strategy Briefing – Informational**
 20. **Resolution of FWP Commission Affirming a Commitment to Fair and Appropriate Hunting and Fishing Opportunities for Residents and Non-Residents**
 21. **Public Opportunity to Address Issues Not Discussed at this Meeting**
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1. **Opening - Pledge of Allegiance.** Chairman Doherty called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.
 2. **Approval of May 12, 2005 Commission Minutes.**
Action: Colton moved and Brenden seconded the motion to approve the minutes of the May 12, 2005 meeting. Motion carried.

3. Approval of Commission Expenses through May 31, 2005.

Action: Colton moved and Workman seconded the motion to approve the Commission expenses through May 31, 2005 as presented. Motion carried.

4. Recognition Award to Bryce Christensen for 30 years of Service to FWP. Director Hagener thanked Christensen for his thirty years of dedicated service to Fish, Wildlife & Parks, and presented him with a beautiful hand carved duck made by Big Sky Carvers. Hagener acknowledged Christensen for accomplishments he achieved since he began his career with FWP as a Warden in 1975 to his present position as Region 7 Supervisor.

5. Recognition Award to Representative Jill Cohenour. Hagener expressed appreciation to Representative Jill Cohenour for her hard work and commitment to Fish, Wildlife & Parks throughout the legislative session. Cohenour chaired the HB172 Fee Increase subcommittee, which was a difficult and challenging task. Hagener presented Cohenour with a framed print of *The Old Man of the Hills* by Larry Zabel as a token of the Department's gratitude.

6. Sun River / Lewis Land Acquisition FAS – Final. Chris Hunter, FWP Fisheries Division Administrator, said this 134-acre proposed acquisition from the Lewis Construction Company is located on the Sun River approximately four miles west of Vaughn. This parcel would be purchased with Fishing Access Acquisition Fund dollars at a price of \$150,000. This area presently supports several fish species, with the potential to accommodate more through the improvements that are underway. Vegetation and habitat support pheasants, partridge, furbearers, waterfowl, deer, antelope, and other wildlife species.

To the north of this parcel is a gravel pit, and is also the location where hundreds of barrels of highway stripping paint and chemicals had been stored. This section was originally part of the proposal, but due to concerns relative to contamination, it was excluded from the acquisition. The barrels have been removed. A series of tests have been conducted to ensure there is no contamination on the portion FWP proposes to acquire.

The public comment period generated letters of support. One comment from a neighbor downstream is not opposed to the FAS, however, there will be no public access on their property. Doherty stated that there must be a clearly defined boundary fence surrounding the FAS, to which Hunter and Darlene Edge, FWP Land Agent, assured him there would be.

Action: Doherty moved and Mulligan seconded the motion to approve the acquisition of the Lewis property along the Sun River at a cost of \$150,000, utilizing Fishing Access Acquisition funds. Motion carried.

7. Whitehall Community Piedmont Fish Pond Acquisition from Golden Sunlight Mines–Final. Chris Hunter, FWP Fisheries Division Administrator said two legislative sessions ago the Community Pond Program was approved by the legislature, and Piedmont Pond was the recipient of the first grant funds given to a community for development of a pond. The Jefferson Valley Sportsmen's Association, Golden Sunlight Mine, FWP, and additional cooperators have worked hard to develop this pond, located on Golden Sunlight land. The Jefferson Valley Sportsmen's Association has volunteered to do the majority of the maintenance relative to the pond, however should that circumstance change, FWP should be capable to assume those long-term duties and expenses.

The comment period generated much support and no opposition. This pond will be ready for fishing this spring.

Mulligan said this pond is adjacent to a large wetlands area, and will be good for birding etc. He said Golden Sunlight Mine will donate the money back to repay what has been spent to develop this land. The Jefferson Valley Sportsmen's Association and several others have gone together and donated \$50,000. Mulligan noted that the community decided to make this a community pond rather than a children's pond to provide more of a mentoring program.

Action: Mulligan moved and Colton seconded the motion to approve the acquisition of the Whitehall Community Piedmont Pond from Golden Sunlight Mine. Motion carried.

8. SB178 Aircraft Herding Administrative Rule – Tentative. Jim Kropp, FWP Enforcement Division Administrator, said SB178, passed in the 2005 legislative session, permits landowners to herd game animals, via fixed wing aircraft or helicopters, for the purpose of herding or hazing wildlife that are causing damage to private property. Aerial herding is not allowed from May 1 – July 15 to protect animals during calving/fawning season.

Kropp summarized the following rules.

NEW RULE I AERIAL HERDING PERMITS: DEFINITIONS

(1) "Affected Property Holder" means person other than the permittee who owns, leases or manages land potentially affected by herding activities. This definition also applies to public land management agencies.

(2) "Department" means the Department of Fish, Wildlife and Parks.

(2) "Herd" "herding" or "aerial herding" means to use aircraft to move, drive or haze the wild animals specified by the permit.

(3) "Landowner" means person owning or managing privately owned land.

(4) "Permit" means written authorization issued by the department allowing a landowner to use aircraft to herd animals specified in the permit.

(5) "Permittee" means a person holding a permit issued by the department to use aircraft to herd animals specified in the permit.

NEW RULE II WHEN AIRCRAFT HERDING PERMITS MAY BE ISSUED (1) The

department may issue a permit to use aircraft to herd ungulates, including deer, elk, and antelope, to a landowner experiencing crop or private property damage, as long as the conditions in these rules are met.

(2) Permits must be issued for a specific time period, not to exceed one year.

NEW RULE III WHEN AERIAL HERDING MAY NOT OCCUR

(1) Aerial herding authorized by permit may not occur during the following times: (a) from May 1 through July 15 to protect animals during times of late gestation or early calving/fawning;

(b) during the seven day period prior to the opening date of any legal hunting season for the species being herded under the permit; or

(c) during any legal hunting season for the species being herded under the permit, including any commission sanctioned game damage hunts in the hunting districts where the landowner will use the permit.

NEW RULE IV APPLYING FOR AIRCRAFT HERDING PERMITS (1) A person desiring a permit shall apply to the department Enforcement Division in Helena which administers the permits.

(2) A completed permit application must include:

(a) a completed permit application form available from the department;

(b) written concurrence from affected property holders required under NEW RULE V;

and

(c) any other information requested by the department in sufficient detail to allow the department to evaluate the nature and impact of the herding, including measures the applicant will use to mitigate potential injury or damage to affected property holders and members of the public.

NEW RULE V CONCURRENCE FROM AFFECTED PROPERTY HOLDERS

(1) If permitted activities will move animals onto, across, or off any lands other than those owned by the permittee, including lands owned by state or federal land management agencies, the permittee shall obtain written concurrence from affected property holders on a form provided by the department.

(2) The written concurrence required in (1) must include the following:

(a) a statement that the affected property holder agrees to the specific actions that could occur under the authority of the permit;

(b) the type of animals that may be moved;

(c) when the animals may be moved from, onto, or across the affected property holder's land;

(d) from which location on the affected property holder's land the animals may be moved;

(e) to which location on the affected property holder's land the animals may be moved;

(f) the route(s) on the affected property holder's land which may be used to move the animals;

and

(g) to what extent, if any, the affected property holder may accept civil liability for any damages which may result from the aerial herding of the animals.

NEW RULE VI REPORT REQUIREMENTS (1) In compliance with 16 USCS 742j-1, Federal Airborne Hunting Law, the permittee shall submit written quarterly reports to the department staff indicated on the permit. The reports shall include at a minimum the following information:

(a) date and time of each herding activity;

(b) type and location (section/range/township) of damage to property or crops;

(c) number and species of animals herded;

(d) description (section/range/township) of animal's location prior to being moved;

(e) location of travel route, depicted on a topographical map, used by animals while being moved;

(f) known injury to or death of animals being moved; and

(h) any damage to property of affected property holders.

NEW RULE VII DEPARTMENT NOTIFICATION AND MONITORING (1) The permittee shall notify the department warden or other designated department staff as indicated on the permit prior to herding activities.

(2) Permittee shall allow the department access, upon reasonable notice when possible, to permittee's lands where herding activities may take place or have taken place for monitoring permit compliance.

NEW RULE VIII GAME ANIMALS KILLED OR INJURED DURING AERIAL HERDING

(1) Permittee shall notify the department staff indicated on the permit within six hours of completing any aerial herding that results in the death or injury of any wildlife.

(2) The permittee shall field-dress and provide proper care of carcasses of any wild ungulates that are killed during the course of aerial herding to ensure that the carcass maintains fitness for human consumption until the department can take possession.

(3) Failure to comply with (2) of this rule may result in citation under 87-3-102, MCA, for waste of fish or game.

(4) A permittee who purposely, knowingly, or negligently causes death or injury of wild animals while acting under authorization of an aerial herding permit issued by the department may be held liable under criminal and civil statutes and may be subject to penalties, including monetary restitution as set forth in department sentencing guidelines.

NEW RULE IX AERIAL HERDING LIABILITY (1) As acknowledged by the permittee's signature on the permit application form, the permittee assumes all liability for the safe and legal operation of the aircraft under state and federal aircraft regulations, and all liability for any damage or injury to property, persons, or wild animals which may occur as a result of an aerial herding operation exercised under a permit.

NEW RULE X PERMIT DENIAL, REVOCATION AND APPEAL (1) Permits are issued at the department's discretion.

(2) A permit may be revoked if the permittee fails to comply with the terms of the permit. Revocation shall be communicated in writing between the department and the permittee.

(3) A person who has been denied a permit, denied renewal of a permit, or whose permit has been revoked may appeal this decision to the director in writing within 30 days of mailing or hand delivery of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

(4) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

Kropp stated that in addition to the written comment period, a public hearing will be held at the FWP Headquarters building the evening of July 20 to accept public comment.

Discussion ensued regarding liability and permission issues across federal and private lands. Kropp said permits can be conditional as to where FWP wants the animals to go, and it must be clear to permittees that liability issues exist. It is hoped that animals will become conditioned as to where they should go. There may be cases that the animals must be moved far away as they might just turn around and return to where they were if in close proximity.

Mulligan stressed that it is important for FWP Wardens to be aware of activity, and inquired if private parties will also be notified. It is important that neighbors be notified and aware to avoid conflicts. Kropp replied that everybody needs to be aware, and attempts will be made to inform them. Mulligan suggested that the rules include a statement to the effect that private parties must be notified of aerial herding activity. (Not in the form of a motion).

Brenden said each case should be judged on its merits, and should be site specific. He is concerned about the timeframes listed in the rules. For instance, farmers may be harvesting by July 15, and these timeframes would restrict moving the animals when they need to. He stated there should be a time limit for turn-around listed under Rule IV. He suggested a 48-hour turnaround from the time a person submits their application for a permit. He noted that obtaining written permission from other property owners may be relatively easy, however obtaining asking permission from the federal government will prove to be difficult and time consuming. Brenden also recommended that Rule X, Section 4, add the words “*unless overridden by the commission*” after “*The director’s decision is final.*” Brenden said he would like to postpone this decision until the next meeting to allow time to put more thought into it as it involves people’s livelihoods.

Kropp replied that there has indeed been a fair amount of thought put into these rules. He stated that young animals cannot travel well and can get hung up on the fences. By July 15, they will be older and more able to successfully relocate. Aerial herding is not allowed during legal hunting season and during calving/fawning season. Kropp added that during the calving/fawning season, animals can still be moved by motorized equipment. He feels a 48-hour turnaround would be a little tight, and he agreed that written permission from the federal government will take time.

Colton said he, too, would like to see flexibility with the May 1 - July 15 dates, as he fears these dates may cause hardships to farmers raising alfalfa, which is valuable and appeals to deer, if they cannot use aircraft to remove deer, nor do they want to drive across the fields to chase them.

Mulligan pointed out that ranchers do not move cattle when calves are dropping. He feels there could be more flexibility in moving wildlife from cropland to adjacent grasslands but not to move them for miles. He reiterated that notification of landowners is necessary to avoid friction between neighbors. Mulligan recommended these rules be proposed as tentatives to solicit public comments and feedback.

Doherty asked for public comments.

Dave Galt, Galt Ranch, commented that they are pleased with Fish, Wildlife & Parks’ efforts. They would like to see the rules in effect. The Galt Ranch agrees with the need to talk with surrounding landowners, but talking to neighbors each instance is cumbersome. They don’t obtain permission now when using four-wheelers to push them out. He said the issue with time is critical. They agree that once the animals start calving/fawning, they don’t want the issue of moving baby animals. They suggest flexibility in that if the babies are not on the ground, move them. They want the ability to get permission up front as individual notification is cumbersome.

Mulligan said the other landowners need the option to either agree up-front, or ask for notification each time, and their wishes needs to be complied with. Brenden said permission should be in written form to protect all involved.

Action: Colton moved to initiate the rulemaking process for tentative Administrative Rules to implement SB178 with the understanding that flexibility be included. Mulligan seconded the motion but added the amendment that there be flexibility in the May 1 – July 15 date as agreed upon by the Department and the landowner to allow the kind of things that have been talked about.

Action on Motion: Colton revoked his motion, stating that Mulligan's amendment to Colton's motion should be the motion, which he said he would second. Mulligan and Doherty agreed with that action.

Action on Motion: Hagener suggested stating that it be a general rule to use May 1 – July 15, but allow for exceptions in specific circumstances. This was agreed upon.

Brenden said he is not against this rule, but feels it should be postponed for another month or six weeks.

Hagener said he would like the last part of the rule to state that the Commission makes the final decision rather than the Director. The statute covers this already. Kropp said Rule X, item 4 can be clarified to reflect what the statute says.

Motion carried. Three in favor – two opposed. (Brenden and Workman).

9. 2005 Moose, Sheep, and Goat Quotas – Final. Jeff Herbert, FWP Wildlife Division Assistant Administrator, and Gary Hammond, FWP Wildlife Division Management Bureau Chief, presented the final Moose, Sheep, and Goat Quotas.

MOOSE

Regions 1, 2, 3, 4, and 5 – Moose

No recommended changes to the tentatives

Action: Mulligan moved and Workman seconded the motion to approve the final Statewide Moose Quotas as recommended by the Department. Motion carried.

BIGHORN SHEEP

Region 1 – Bighorn Sheep

Three recommended changes to the tentatives – HDs 122-30, 124-00, and 124-30

Jim Williams, FWP Region 1 Wildlife Manager, said the number of ewes has dropped two years in a row in HD122.

Action: Workman moved and Brenden seconded the motion to approve the Region 1 Bighorn Sheep quotas as recommended by the Department. Motion carried.

Region 2 – Bighorn Sheep

Four recommended changes to the tentatives – HDs 203-00, 203-30, 283-00, and 283-30

Mulligan asked why the recommendations are above objectives. John Firebaugh, FWP Region 2 Wildlife Manager, replied that due to good habitat at this time, it is not crucial to be above the objectives.

Action: Workman moved and Mulligan seconded the motion to approve the Region 2 Bighorn Sheep quotas as recommended by the Department. Motion carried.

Regions 3, 4, 5, and 6 - Bighorn Sheep

No recommended changes to the tentatives

Action: Mulligan moved and Brenden seconded the motion to approve the Regions 3, 4, 5, and 6 Bighorn Sheep quotas as recommended by the Department. Motion carried.

MOUNTAIN GOATS

Regions 1, 2, 3, 4, and 5 – Mountain Goats

No recommended changes to the tentatives

Action: Colton moved and Brenden seconded the motion to approve the Regions 1, 2, 3, 4, and 5 Mountain Goat quotas as recommended by the Department. Motion carried.

10. 2005 Mountain Lion Quotas – Final.

Regions 1, 2, 3, 4, 5, 6, and 7 – Mountain Lions

No recommended changes to the tentatives

Action: Mulligan moved and Workman seconded the motion to approve the Regions 1, 2, 3, 4, 5, 6, and 7 Mountain Lion quotas as recommended by the Department. Motion carried.

11. 2006 Moose, Sheep, Goat Auction and Deer and Elk Auction/Lottery Annual Rules – Final.

The Montana legislature authorized FWP to auction one moose, sheep, and goat license annually, and the authority to auction or hold a lottery of one mule deer license and one elk license annually. FWP has elected to offer to wildlife conservation organizations the opportunity to conduct the auctions/lottery, from which the proceeds are used to benefit the species. The annual rules are brought before the Commission each year prior to soliciting bids from organizations who wish to conduct the auction/lottery. Herbert said no comments were received during the public comment period on the annual rule, so upon approval by the Commission, the next step is to solicit organizations to conduct the auctions/lottery.

Action: Brenden moved and Colton seconded the motion to adopt the annual rule for the auction of the moose, mountain sheep, and mountain goat, and for the auction/lottery of a mule deer and elk license. Motion carried.

12. 2005 Furbearer Quotas – Tentative. Brian Giddings, FWP State Furbearer Coordinator, explained that furbearers are designated under legislative statute to include beaver, otter, muskrat, mink, marten, fisher, wolverine, bobcat, lynx and swift fox. Trapping is only allowed on eight of the ten species. Data that is utilized to monitor population trend include age class structure, male to female ratios, mean and median ages, the number of juveniles to adult females, percentage of juveniles and yearlings, harvest numbers, season closure dates, and snow-track surveys. Quota changes are based on population parameters from species data collected through biological analysis and harvest information. Due to increased trapping interest over the last few years, some quotas are filled early. Quotas are reviewed annually

Giddings said FWP is in the process of developing a statewide database to house all harvest information based on reporting requirements. This will allow quicker analysis to determine trend information. There is an increased interest in trapping otter – they have become more of a target species rather than incidental take.

Mulligan said last year he supported tagging ten days after the season rather than five days after the capture to try to help trappers on travel issues and logistics on finding a warden to tag it. Parallel with that was a request to have a reporting system where trappers would be required to report a more specific location of their “catch”, (township, section, range) so enforcement could access the information to pursue any concerns they may have. He had also suggested that the rule provide

wardens with the authority to require trappers to present the animal on demand by wardens. This last proposal to the rule was not approved by the Commission. That wording is in the big game laws, but the Commission did not want it in the trapping laws. He said reporting is not specific, and wardens are having trouble with the reporting as it currently is. Since this is an interim year, the 10-day reporting cannot be changed or he would change it back to the 5-days after capture. As a minimum what can be done is to require specificity in reporting.

Kropp said it would greatly assist wardens if they were provided with a specific location of the take that would include section, township and range. That is required and normally have to report that information anyway. There have been numerous occasions where bobcats have been taken out of season, and have been taken in regions that were closed but were reported as being taken in open regions. He noted that the illegal ones will not be reported anyway. Kropp said if they receive a report soon enough – within 24 hours – wardens can tell if an animal was indeed taken there. Mulligan said there are so much shenanigans going on, and cats are not being reported. He feels the quota will be reduced.

Action: Mulligan moved and Colton seconded the motion to direct the Department to collect township, range and section as part of the 24-hour reporting requirement. Motion carried.

Workman asked if this is specific enough, as this still comprises of 640 acres, to which Kropp replied it is better than what they have now. Kropp added that they like to take the trappers with them when they investigate, and they can obtain search warrants.

Action on Motion: Motion carried.

BEAVER

Statewide - Beaver

No recommended changes to the 2004 quotas

Action: Brenden moved and Workman seconded the motion to approve the statewide Beaver Quotas as recommended by the Department. Motion carried.

BOBCAT

Region 1 - Bobcat

One recommended change to the 2004 quotas – Increase from 200 to 250

Action: Workman moved and Colton seconded the motion to approve the Region 1 Bobcat quotas as recommended by the Department. Motion carried.

Region 2, 4, 5 and 6 – Bobcat

No recommended changes to the 2004 quotas

Action: Brenden moved and Mulligan seconded the motion to approve the Regions 2, 4, 5, and 6 Bobcat quotas as recommended by the Department. Motion carried

Region 3 – Bobcat

One recommended change to the 2004 quotas - Increase from 225 to 300

Action: Mulligan moved and Colton seconded the motion to approve the Region 3 Bobcat quotas as recommended by the Department.

Discussion: Kirk Knutson said that although he is a member of MTA, he is not representing them in his request to increase the number of Bobcat tags to 400. He feels that when you see detrimental effects, that is the time to reduce the quota.

Mulligan said that number is pushing the upper limit – it's a matter of increasing incrementally rather than one large increase.

Craig Fager, FWP Region 3 Wildlife Biologist from Dillon, defended the recommendation of 300 by stating that median ages have declined over the last 8 years.

Action on motion: Motion carried. Four in favor – one opposed (Doherty).

Region 7 – Bobcat

One recommended change to the 2004 quotas – Increase from 600 to 700

Action: Colton moved and Brenden seconded the motion to approve the Region 7 bobcat quotas as recommended by the Department. Motion carried.

OTTER

Regions 1, 3, 4, 5, 6, and 7 - Otter

No recommended changes to the 2004 quotas

Action: Brenden moved and Colton seconded the motion to approve the Regions 1, 3, 4, 5, 6, and 7 Otter quotas as recommended by the Department. Motion carried

Region 2 - Otter

One recommended change to the 2004 quotas – Increase from 19 to 20

Action: Workman moved and Mulligan seconded the motion to approve the Region 2 Otter quotas as recommended by the Department. Motion carried

FISHER

Regions 1, 2, 3, 4, 5, 6, and 7 - Fisher

No recommended changes to the 2004 quotas

Action: Colton moved and Mulligan seconded the motion to approve the Regions 1, 2, 3, 4, 5, 6, and 7 Fisher quotas as recommended by the Department. Motion carried

WOLVERINE

Management Units 1 –3 – Wolverine

No recommended changes to the 2004 quotas

Action: Mulligan moved and Workman seconded the motion to approve the Wolverine Management Units 1 – 3 quotas as recommended by the Department. Motion carried.

13. Trumpeter Swan Translocation – Final. Jeff Herbert, FWP Wildlife Division Assistant Administrator, explained that this group of birds is a part of the Rocky Mountain population that involves two groups – the Tri-state group and a larger Canadian segment. There have been recent efforts to establish swans in the Flathead Valley on the Flathead Indian Reservation in hopes three or more pairs will nest there. In 2004 efforts were made to establish a pair in the Blackfoot Valley, but the female died and the male relocated, thus no cygnets were released. It is now proposed to capture and release between 10-20 swans annually on designated wetlands in the Blackfoot Valley over the

next few years. The intent is to establish seven breeding pairs in the Blackfoot Valley with continued evaluations of the success of the effort. An EA was prepared and a Decision Notice was issued in 2004, and the Commission approved the project last April. The issues are no different than before.

Action: Workman moved and Mulligan seconded the motion that the Department initiate the introduction of 10-20 sub-adult Trumpeter Swans into the Blackfoot Valley on an annual basis until a breeding population of swans is established, or until evaluation of the project suggests termination of the transplant process. Motion carried.

14. MT Haggin WMA Livestock Grazing Lease with Willow Glen Ranch – Final. This grazing lease has been in effect since the 1980's, and **Gary Hammond, FWP Wildlife Management Bureau Chief**, said this lease renewal is for another six-year period of time with the same terms as the last lease period. The grazing fee is the same as the current Department of Natural Resources grazing rate of \$6 per AUM. The lessee is responsible for basic maintenance, and for livestock movement in accordance with rest rotation procedures. FWP is responsible for capital improvements.

Action: Brenden moved and Mulligan seconded the motion to approve the lease renewal of the Mount Haggin WMA livestock grazing lease with Willow Glen Ranch for six years.

Discussion: Mulligan asked if any other parties are grazing there? **Craig Fager, FWP Region 3 Wildlife Biologist**, said there are two 3-pasture rest/rotation systems with the same rate and responsibilities. Doherty asked if people can hunt on this land, to which Hammond replied yes, there is a block management plan with Willow Creek.

Action on Motion: Motion carried.

15. Ear Mountain Grazing Lease – Final. **Gary Hammond, FWP Wildlife Management Bureau Chief**, said this proposal is for a renewal of a lease with Salmond Ranch that FWP has had for several years. The lease would be in effect for the 2005-2006 grazing seasons and adheres to rest/rotation procedures. FWP is conducting browse evaluations. The grazing fee is \$15.90 AUM, however the Department is responsible for fence maintenance and improvements. Salmond Ranch does not allow hunting on their property. Doherty questioned why FWP leases land to someone who will not allow hunting.

Action: Doherty moved and Brenden seconded the motion to approve the Ear Mountain WMA grazing lease with the Salmond Ranch for the 2005-2006 grazing season. Motion carried.

16. Blue Eyed Nellie WMA – Long Property – Endorsement. **Don Childress, FWP Wildlife Division Administrator**, said this proposal is for 96 acres near the Blue Eyed Nellie WMA near Anaconda, which is only 6 acres but critical bighorn sheep range. The sheep population there was once abundant, but declined following a die-off stage, and is now recovering. The Forest Service has enhanced this property with their land exchanges. It is not grazed but is in need of weed control. FWP will be obtaining an appraisal. Childress said there is a great deal of support from the local community. He noted that the landowner did not want to do this as an easement, but only as fee-title.

Mulligan said FNAWS watches things closely, and they are in favor of this acquisition, so he feels it would be wise to endorse this proposal. Childress said there is little hunting on the land. Mulligan said we need to think about what will happen when it becomes public and subdivisions are built.

Action: Mulligan moved and Workman seconded the motion to endorse the proposed Blue Eyed Nellie WMA acquisition and continue efforts to acquire this property. Motion carried.

17. Beckman Estate Land Acquisition & Gift – Informational. Don Childress, FWP Wildlife Division Administrator, explained that LeRoy Beckman had had an interest in acquiring land for mule deer, and when he died in 1997, his Last Will and Testament reflected his desire that a major portion of his estate be used to acquire mule deer habitat and gift the lands to FWP. FWP has already been the recipient of three parcels of lands by this trust, totaling 4,890 acres. The first gift of 2,565 acres along the Judith River near Denton was named the Beckman WMA. The proposed acquisition/gift now under consideration is owned by the Barber family and is adjacent to the northern boundary of the Beckman WMA, and would be a superb addition to the WMA. The amount of money left in the trust is nearly spent.

Brenden expressed concern about state land acquisitions affecting the tax base. Childress said FWP does maintain tax payments on wildlife lands.

18. 2005-2006 Bison Hunting Season Options – Informational. Pat Flowers, FWP Region 3 Supervisor, explained that subsequent to the Commission's request that the Department investigate a way to provide more Bison permits, it was concluded that one option under the existing EA could allow up to twenty-five permits within each of two time periods within the season. In order to consider a season type like that, an amended Record of Decision would need to be rewritten, and signed, to allow two time periods that would be consistent with the impacts of the EA. FWP would work with Department of Livestock to adjust hazing efforts, open more ground on the west side, revise the ROD, and the same conditions would be required as written in the EA. If the Commission wants to offer substantially more permits than written in the EA, the process would need to begin all over again, including the public comment period.

Hagener said SB91 legislated that 8 permits in each season would go to tribal members. He added that the ten permits that were drawn in January would have the option as to which season they wanted, and the balance would then be drawn. Colton likes this proposal, but wants to know what the season parameters are as far as dates and lengths of time so there are similar hunting opportunities for each segment of the hunt.

Flowers said when specific season proposals are presented to the Commission in July, explanations on how to structure the season to achieve equal opportunities will be provided. FWP is still working on that process, taking history of migration patterns into consideration.

Mulligan asked if there was any latitude in the EA where "group 1" hunts Friday and Saturday and "group 2" hunts Sunday and Monday, then hazing happens on Tuesday and Wednesday. Flowers said the EA did not contemplate that kind of approach because altering days of the week is essentially still hunting hazed bison because they are pushed into the Park and then take a predictable path back out of the Park. They felt that would violate the terms of the fair chase requirement in the statute.

Colton questioned the allocation process for the permits as far as issuing the eight permits to the tribes. Would each tribe have one in the first segment and one in the second? Hagener said yes. Herbert asked if the legislation specified if it was the tribal responsibility to select individuals who receive permits. Hagener replied that there is a high rate of diabetes on the reservations, and each one has a tribal diabetic program, and legislation specifically says that the tribal diabetic program will designate the individual who receives the permit. FWP will need to contact the tribes for them to designate an individual permittee. Tribes receive permits free of charge.

Workman asked when a new EA must be started to issue more permits if there is a need. Flowers replied if the Commission wants the Department to issue more than 25 permits per period next year, FWP will need to conduct a supplemental EA review. In answer to Doherty's question, he said it would take nine months lead-time to get the work done before next season. Workman said if he wants to kill 50-200 buffalo, FWP needs to have the "door open" so the decision can be made. He asked if he can instruct staff to start the supplemental EA to look at larger numbers. Hagener said that he could, but it is important to look at the timing, and see what happens this year before a decision is made for next year. Flowers said the process could be started for the public involvement, which will take at least 6 months, then the Department would have the benefit of having gone through this upcoming season before the final decision is made. Colton agrees that something needs to be in motion so that the Commission can learn from this season and prepare for the next season. Flowers recommended beginning the process soon. Flowers said he has gotten the message "loud and clear" that the Commission wants one alternative that contemplates substantially higher numbers which will be included in a new supplemental EA.

Herbert said to be in line with the other seasons' frameworks, which include the outside dates and the areas of hunting, if the Commission wants to do something different framework-wise, it needs to be done by the February meeting. The quotas will be developed in July and August.

Doherty asked why other species can be bumped up, i.e. the increase in bobcats earlier in this meeting. Was there previously an environmental analysis that allowed the change of numbers? Herbert said a Programmatic Wildlife EIS was done in 1999. Doherty then asked if bison were classified as wildlife, would that same programmatic EIS provide the same flexibility. Flowers replied that it was explicit in the statute that reauthorized a bison hunt that an Environmental Review was part of that authorization, giving it unique requirements that would not apply to wildlife.

Mulligan said the original intent was to design a season that was most likely to succeed, and that design was to start small and expand.

Action: Workman moved and Colton seconded the motion to instruct staff to conduct a supplemental EA concerning the potential number of bison to be hunted in Montana in the future including all parameters to maintain ethical hunting.

Discussion: Mulligan said he does not want to be in a situation in February where the Department's recommendation is where it has been, with the Commission wanting to go to the high numbers presently being talked about, which are contrary to what the Department recommends and contrary to what the public wants, and where the Department and Commission are putting hunters into a situation of a large number of hunters in a small area with the world watching. Shane said that is not his intent, but he would like an EA in place. Hagener said even after going through the EA process, it still may come back to what we have now as a preferred alternative.

Action on Motion: Motion carried. Four in favor – one opposed. (Mulligan).

19. Comprehensive Fish & Wildlife Strategy Briefing – Informational. (Entire presentation in June Commission file). T. O. Smith, FWP Planning Coordinator, briefly explained the Strategy. The Sport Fish and Wildlife Restoration Acts provide \$12 million per year, and hunter and anglers provide \$38 million to enhance eighty game species of wildlife and approximately 500 non-game species. He said there are twelve vertebrate species listed as threatened or endangered, and 119 vertebrae species of concern. He explained the funding sources, the congressional requirements and the IAFWA guiding principals. There are four components to the Strategy: 1) Focus Areas, 2) Community Types, 3) Species, and 4) Inventory Needs. These components are prioritized into tiers of which are, Tier I – Greatest Conservation Need, Tier II – Moderate Conservation Need, Tier III – Lowest Conservation Need, and Tier IV – Species that are non-native, incidental or on the periphery of their range and either expanding or very common in adjacent states.

20. Resolution of FWP Commission Affirming a Commitment to Fair and Appropriate Hunting and Fishing Opportunities for Residents and Non-Residents. Hagener provided the Resolution written by the FWP Legal Unit.

**RESOLUTION OF THE MONTANA FISH, WILDLIFE AND PARKS COMMISSION AFFIRMING A
COMMITMENT TO FAIR AND APPROPRIATE HUNTING AND FISHING OPPORTUNITIES FOR
RESIDENTS AND NONRESIDENTS**

WHEREAS, Montana and other States have traditionally made the determinations of how to allocate limited hunting and fishing among residents and nonresidents;

WHEREAS, a recent court decision in the 9th Circuit held that recreational hunting was a commercial activity and that the Commerce Clause of the U.S. Constitution therefore applied;

WHEREAS, this decision threatened to erode Montana's and other States' ability to set their own course in regulating hunting and fishing; and

WHEREAS, Congress passed and the President signed on May 11, 2005, the "Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005" that establishes and affirms the authority of individual states to continue to regulate hunting and fishing within their borders including differentiating between nonresident and residents both in the availability of licenses or permits and in the fees charged.

NOW, THEREFORE, the Montana Fish, Wildlife and Parks Commission (Commission) declares it supports the authority of Montana to control its own destiny in the management of fishing and hunting through the Montana Legislature and through its own rulemaking. This allows Montana to regulate a sometimes limited resource while recognizing the level of local sacrifice and contribution necessary to maintain viable and healthy populations of game and fish. Congress has recognized Montana, and all other States, as the stewards of fish and wildlife resources within their borders and thereby, supports this highly successful model of fish and wildlife protection and management in the United States.

The Commission in exercising its part in managing the hunting and fishing opportunities of both its residents and nonresidents pledges:

- a. to maintain a limited preference for residents in circumstances where there is a limited resource; and
- b. to continue, at the same time, to preserve a reasonable and fair opportunity for nonresidents to participate.

Action: Brenden moved and Colton seconded the motion to approve this resolution as written by the Department. Motion carried.

21. Public Opportunity to Address Issues Not Discussed at this Meeting. No comments.

The Work Session was postponed until a later date.

Action: Colton moved and Mulligan seconded the motion to adjourn. Motion carried.

Meeting adjourned at 11:55 a.m.